

AUTHORIZING THE SECRETARY OF VETERANS AFFAIRS TO RECOUP BONUSES AND AWARDS PAID TO EMPLOYEES OF THE DEPARTMENT OF VETERANS AFFAIRS

MARCH 2, 2015.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MILLER of Florida, from the Committee on Veterans' Affairs,
submitted the following

R E P O R T

[To accompany H.R. 280]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 280) to authorize the Secretary of Veterans Affairs to recoup bonuses and awards paid to employees of the Department of Veterans Affairs, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. AUTHORITY TO RECOUP BONUSES OR AWARDS PAID TO EMPLOYEES OF DEPARTMENT OF VETERANS AFFAIRS.

(a) IN GENERAL.—Chapter 7 of title 38, United States Code, is amended by adding at the end the following new section:

“§ 715. Recoupment of bonuses or awards paid to employees of Department

“(a) RECOUPMENT.—Notwithstanding any other provision of law, the Secretary may issue an order directing an employee of the Department to repay the amount, or a portion of the amount, of any award or bonus paid to the employee under title 5, including under chapters 45 or 53 of such title, or this title if—

“**(1)** the Secretary determines such repayment appropriate pursuant to regulations prescribed under subsection (c); and

“**(2)** before such repayment, the employee is afforded notice and an opportunity for a hearing conducted by another department or agency of the Federal Government.

“(b) REVIEW.—A decision regarding a repayment by an employee pursuant to subsection (a)(2) is final and may not be reviewed by any department or agency or any court.

“(c) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is further amended by adding at the end the following new item:

“715. Recoupment of bonuses or awards paid to employees of Department.”.

(c) EFFECTIVE DATE.—Section 715 of title 38, United States Code, as added by subsection (a), shall apply with respect to an award or bonus paid by the Secretary of Veterans Affairs to an employee of the Department of Veterans Affairs before, on, or after the date of the enactment of this Act.

(d) CONSTRUCTION.—Nothing in this Act or the amendments made by this Act may be construed to modify the certification issued by the Office of Personnel Management and the Office of Management and Budget regarding the performance appraisal system of the Senior Executive Service of the Department of Veterans Affairs.

PURPOSE AND SUMMARY

H.R. 280, as amended, to authorize the Secretary of Veterans Affairs to recoup bonuses and awards paid to employees of the Department of Veterans Affairs, was ordered to be favorably reported to the full House on February 12, 2015, by voice vote. H.R. 280 was introduced on January 12, 2015, by Chairman Jeff Miller of Florida. H.R. 280, as amended, would give the Secretary of the Department of Veterans Affairs (the Secretary) the authority to rescind all or part of the amount of any award or bonus paid to an employee of the Department of Veterans Affairs (VA) under chapters 45 or 53 of title 5, United States Code (U.S.C.), or title 38 U.S.C. This new authority would apply to any award or bonus paid by VA before, on, or after the date of enactment of this act. H.R. 280, as amended, would require that notice be given to the employee of the repayment, and that the employee be afforded the opportunity to a hearing by a third-party department or agency of the Federal Government prior to the recoupment. Lastly, H.R. 280, as amended, would require the Secretary to prescribe the necessary regulations to carry out this new authority.

BACKGROUND AND NEED FOR LEGISLATION

Over the past year, VA has been criticized for a wide range of issues that have affected the care and earned benefits of veterans.

Over several Congresses, investigations by the Committee on Veterans' Affairs (the Committee), and the VA's Office of the Inspector General (VAOIG), have uncovered evidence of manipulation of VA's medical appointment system. This manipulation hid the fact that veterans waited months to receive medical appointments at many VA medical centers, while VA records improperly reflected wait times of only several days. This delay in receiving needed health care at the VA may have had serious consequences to the health and well-being of veterans, and may have led to preventable deaths. Investigations also uncovered evidence that some VA employees and VA senior managers may have allegedly falsified data to improve their performance metrics to receive bonuses. Regardless of whether falsified data used to justify the receipt of bonus money was deliberately manipulated or not, bonus awards should be provided on the basis of actual, verified performance, and not on an inaccurate portrayal of one's work.

According to VA, in fiscal year 2013, the Secretary issued a total of \$2,827,377 in performance awards to 304 Senior Executive Service (SES) employees and title 38 equivalent employees. Many of these 304 individuals were the senior managers ignoring, or worse, fostering, mismanagement and negligence at VA medical facilities and in Regional Offices.

Following investigations by the Committee, the VAOIG, and outside media outlets that brought these VA scandals to light during the 113th Congress, Committee Members questioned the large sums of bonuses that were issued to many VA employees, especially many senior VA leaders who oversaw facilities where "secret" appointment wait-lists were used. Committee Members questioned VA at several Committee hearings from April 2014 to August 2014 on whether the Secretary would have the legal authority to recoup any performance awards or bonuses issued to VA employees if the Secretary deemed their performance, particularly performance based on manipulated or inaccurate data, merited the recoupment. On June 17, 2014, Committee staff was told at a briefing by Mr. Samuel Retherford, VA's Principal Deputy Assistant Secretary for Human Resources and Administration, that the Secretary had the authority to rescind any bonus or performance award from an SES employee within 12 months of it being awarded to the employee. Later, at a June 20, 2014, Full Committee oversight hearing entitled, "A Review of Awarding Bonuses to Senior Executives at the Department of Veterans Affairs," the Honorable Gina Farrisee, VA's Assistant Secretary for Human Resources and Administration, informed Members of the Committee that the Secretary did not have the authority to rescind any bonus or performance award from any employee after the award had been issued.

On July 15, 2014, following the conflicting statements made by VA employees as to whether the Secretary had the authority to rescind a performance award, Chairman Miller sent then-Acting Secretary Sloan Gibson a letter explicitly inquiring whether VA has the authority to rescind a bonus already issued to an employee. Deputy Secretary Sloan Gibson replied via letter on August 19, 2014 that "the Department does not have the authority to rescind performance awards issued in accordance with policies and paid to employees for performance ratings that are final."

On July 17, 2014, following Deputy Secretary Gibson's response, Chairman Jeff Miller introduced H.R. 5094 in the 113th Congress to give the Secretary this authority. H.R. 5094, as amended, was ordered to be favorably reported to the full House on September 10, 2014, by voice vote but was not considered by the full House. Chairman Miller reintroduced the measure as H.R. 280 in the 114th Congress. The Committee believes that if a VA employee acts unbecoming of VA and its mission to veterans, as determined by the Secretary, then the Secretary should have the authority to rescind any bonus or performance award from any prior, current, or future employee, which is the intent of H.R. 280, as amended.

HEARINGS

On February 27, 2015, the full House Committee on Veterans' Affairs conducted a legislative hearing on various bills introduced during the first month of the 114th Congress, including H.R. 280. The Department of Veterans Affairs failed to take a position on H.R. 280 during this legislative hearing. The following witnesses testified:

The Honorable Alan Grayson, U.S. House of Representatives, 9th District, Florida; Mr. David R. McLenachen, Acting Deputy Under Secretary for Disability Assistance, Veterans Benefits Administration, U.S. Department of Veterans Affairs, accompanied by Dr. Rajiv Jain, Assistant Deputy Under Secretary for Health for Patient Services, Veterans Health Administration, U.S. Department of Veterans Affairs, Ms. Susan Sullivan, Deputy Assistant Secretary for Policy, Office of Policy and Planning, U.S. Department of Veterans Affairs, and Ms. Kim McLeod, Counsel, Office of General Counsel, U.S. Department of Veterans Affairs; Mr. Joseph A. Violante, National Legislative Director, Disabled American Veterans; Mr. Aleks Morosky, Deputy Director, National Legislative Service, Veterans of Foreign Wars of the United States; and Mr. Blake Ortner, Deputy Government Relations Director, Paralyzed Veterans of America.

Statements for the record were submitted by the following:
The House Policy Council, Financial Services Roundtable.

SUBCOMMITTEE CONSIDERATION

There was no subcommittee consideration of H.R. 280.

COMMITTEE CONSIDERATION

On February 12, 2015, the full Committee met in an open mark-up session, and a quorum being present, ordered H.R. 280, as amended, to be reported favorably to the House of Representatives, by voice vote. During consideration of the bill, the following amendment was considered and agreed to by voice vote:

An amendment in the nature of a substitute by Chairman Jeff Miller of Florida which added to the original language of H.R. 280 as introduced, provisions which would require the Secretary to prescribe regulations for carrying out the recoupment of the award, and would require that any hearing or appeal of the Secretary's decision to recoup the bonus be held before a third-party department or agency of the Federal Government.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report the legislation and amendments thereto. There were no recorded votes taken on amendments or in connection with ordering H.R. 280, as amended, reported to the House. A motion by Ranking Member Corrine Brown of Florida to report H.R. 280, as amended, favorably to the House of Representatives was agreed to by voice vote.

COMMITTEE CORRESPONDENCE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC, February 27, 2015.

Hon. JASON CHAFFETZ, *Chairman,*
House Committee on Oversight and Government Reform,
Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN CHAFFETZ: In reference to your letter on February 26, 2015, I write to confirm our mutual understanding regarding H.R. 280, as amended, "To authorize the Secretary of Veterans Affairs to recoup bonuses and awards paid to employees of the Department of Veterans Affairs."

I appreciate the House Committee on Oversight and Government Reform's waiver of consideration of provisions under its jurisdiction and its subject matter as specified in your letter. I acknowledge that the waiver was granted only to expedite floor consideration of H.R. 280, as amended, and does not in any way waive or diminish the House Committee on Oversight and Government Reform's jurisdictional interests over this legislation or similar legislation. I will support a request from the House Committee on Oversight and Government Reform for appointment to any House-Senate conference on H.R. 280, as amended.

Again, thank you for your assistance with these matters.

With warm personal regards, I am

Sincerely,

JEFF MILLER,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC, February 26, 2015.

Hon. JEFF MILLER,
Chairman, Committee on Veterans' Affairs,
Washington, DC.

DEAR MR. CHAIRMAN: I write concerning H.R. 280, to authorize the Secretary of Veterans Affairs to recoup bonuses and awards paid to employees of the Department of Veterans Affairs. As you know, the Committee on Veterans' Affairs received an original referral and the Committee on Oversight and Government Reform a secondary referral when the bill was introduced on January 12, 2015. I recognize and appreciate your desire to bring this legislation before the House of Representatives in an expeditious manner,

and accordingly, the Committee on Oversight and Government Reform will forego action on the bill.

The Committee takes this action with our mutual understanding that by foregoing consideration of H.R. 280 at this time, we do not waive any jurisdiction over the subject matter contained in this or similar legislation. Further, I request your support for the appointment of conferees from the Committee on Oversight and Government Reform during any House-Senate conference convened on this or related legislation.

Finally, I would ask that a copy of our exchange of letters on this matter be included in the bill report filed by the Committee on Veterans' Affairs, as well as in the Congressional Record during floor consideration, to memorialize our understanding.

Sincerely,

JASON CHAFFETZ,
Chairman.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 280, as amended, does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate on H.R. 280, as amended, prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate for H.R. 280, as amended, provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 2, 2015.

Hon. JEFF MILLER,
Chairman, Committee on Veterans' Affairs,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 280, a bill to authorize the Secretary of Veterans Affairs to recoup bonuses and awards paid to employees of the Department of Veterans Affairs.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Dwayne M. Wright.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 280—A bill to authorize the Secretary of Veterans Affairs to recoup bonuses and awards paid to employees of the Department of Veterans Affairs

H.R. 280 would give the Secretary of Veterans Affairs the authority to recoup all or part of awards and bonuses that were paid to employees of the agency. Affected employees would have to be provided with a notice of recoupment and an opportunity for a hearing conducted by another agency of the federal government. The new authority would apply to payments made by the Department of Veterans Affairs (VA) before the date of enactment of H.R. 280, as well as those made after that date. Based on discussions with the agency, CBO expects that this provision would be used infrequently, primarily to recoup payments made to senior VA employees who were determined to have committed a serious violation of the agency's standards of conduct. Of the roughly \$400 million that VA pays out each year for awards and bonuses, about \$4 million goes to senior staff.

Most federal statutes of limitation are no more than six years. On that basis, CBO expects that VA would not attempt to recoup payments made more than six years prior to the date of enactment. In addition, the authority would only affect current employees of VA; employees who resigned or retired would be exempt from recoupment.

In recovering overpayments made to employees, federal agencies have several options: they can require lump-sum or installment payments, or they can use salary offsets—regular deductions from bi-weekly payroll payments. Based on general practices at federal agencies, CBO assumes that in most cases VA would offset future salary payments. Such offsets would reduce discretionary costs. In those cases where VA would require a lump-sum or installment repayment, the funds would generally be deposited in the Treasury and would be considered a reduction in direct spending. Because CBO believes that this authority would be used infrequently, and because employees could avoid recoupment by leaving the agency, we estimate that implementing H.R. 280 would decrease personnel costs by less than \$500,000 over the 2016–2020 period, assuming appropriation actions consistent with the bill. In addition, enacting

the bill would reduce direct spending by an insignificant amount; therefore, pay-as-you-go procedures apply.

Enacting H.R. 280 would not affect revenues.

H.R. 280 would impose a private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA) by permitting the Secretary of Veterans Affairs to recoup awards and bonuses given to VA employees. The Secretary could direct any employee to repay all or a portion of the amounts paid. Requiring employees to repay their awards and bonuses retroactively would impose a private-sector mandate on those employees. CBO expects that, in total, the amount of bonuses and awards recouped would not be substantial. Therefore, CBO estimates that the cost of the mandate to VA employees would fall well below the annual threshold for private-sector mandates established in UMRA (\$154 million in 2015, adjusted annually for inflation).

H.R. 280 contains no intergovernmental mandates as defined in UMRA.

The CBO staff contacts for this estimate are Dwayne M. Wright (for federal costs) and Paige Piper/Bach (for private-sector effects). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 280, as amended, prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 280, as amended.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, the reported bill is authorized by Congress' power to "provide for the common Defense and general Welfare of the United States."

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

STATEMENT ON DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee finds that no provision of H.R. 280, as amended, establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 114th Cong. (2015), the Committee estimates that H.R. 280, as amended, contains one directed rule making at section 1 which would require the Secretary to prescribe regulations to carry out this section.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1—Authority to Recoup Bonuses or Awards Paid to Employees of Department of Veterans Affairs

Section 1(a) of the bill would amend Chapter 7 of title 38 U.S.C., by adding at the end of the chapter, a new section, Section 715. This section would give the Secretary of the Department of Veterans Affairs the authority to direct any VA employee to repay, in part or in full, an award or bonus paid to the employee under chapters 45 or 53 of title 5 if the Secretary determines the repayment appropriate and would direct the Secretary to prescribe regulations to carry out this section. Section 1(a) would also require that the employee be given notice of the repayment requirement and be afforded the opportunity to a hearing before a third party department or agency of the Federal Government. The decision made by this third party entity would be final and may not be reviewed any further by any department, agency, or court.

Section 1(b) adds a clerical amendment at the beginning of Chapter 7 of title 38 U.S.C. to reflect the new section, to read as—“715. Recoupment of bonuses or awards paid to employees of Department.

Section 1(c) applies this provision to any award or bonus paid by the Secretary of Veterans Affairs to an employee of the Department of Veterans Affairs before, on, or after the date of the enactment of this Act.

Section 1(d) ensures that nothing within section 1 of H.R. 280, as amended, may be construed to modify the certification issued by the Office of Personnel Management and the Office of Management and Budget regarding the performance appraisal system of the Senior Executive Service of the Department of Veterans Affairs.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

* * * * *

PART I—GENERAL PROVISIONS

* * * * *

CHAPTER 7—EMPLOYEES

Sec.

701. Placement of employees in military installations.

* * * * *

715. Recoupment of bonuses or awards paid to employees of Department.

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§ 715. Recoupment of bonuses or awards paid to employees of Department

(a) *RECOUPMENT.*—Notwithstanding any other provision of law, the Secretary may issue an order directing an employee of the Department to repay the amount, or a portion of the amount, of any award or bonus paid to the employee under title 5, including under chapters 45 or 53 of such title, or this title if—

(1) the Secretary determines such repayment appropriate pursuant to regulations prescribed under subsection (c); and

(2) before such repayment, the employee is afforded notice and an opportunity for a hearing conducted by another department or agency of the Federal Government.

(b) *REVIEW.*—A decision regarding a repayment by an employee pursuant to subsection (a)(2) is final and may not be reviewed by any department or agency or any court.

(c) *REGULATIONS.*—The Secretary shall prescribe regulations to carry out this section.

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